

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	File No.: EB-IHD-14-00014999 ¹
Telseven, LLC,)	NAL/Acct. No.: 201232080024
Patrick Hines)	FRNs: 0009834466, 0021816459
)	
)	

FORFEITURE ORDER

Adopted: February 18, 2016

Released: February 18, 2016

By the Commission: Commissioner O’Rielly concurring in part and dissenting in part.

I. INTRODUCTION

1. Telecommunications service providers are required to pay federal regulatory fees and make timely contributions to programs such as the Universal Service Fund (USF). When providers fail to meet these obligations, they undermine the efficiency of these programs and obtain an unfair competitive advantage over companies that comply with the Communications Act of 1934, as amended (Act) and the Commission’s rules (Rules). In a Notice of Apparent Liability (NAL), the Commission detailed apparent violations of these obligations by Telseven, LLC (Telseven or Company) and Patrick Hines (Hines).² After opportunity for further submissions by the parties, we impose a penalty of \$1,758,465, jointly and severally, against Telseven and Hines for failing to contribute fully to the USF and the cost recovery mechanisms for local number portability (LNP) and the North American Numbering Plan (NANP), failing to pay regulatory fees, and failing to provide good faith estimates of its revenues in its Quarterly Telecommunications Reporting Worksheet filings (Form 499–Q).

2. For several years, Telseven, at the direction of Hines, offered a service that provided consumers with the ability to obtain information about recently disconnected or out-of-service toll free numbers, and the offering of this service obligated the Company as a telecommunications service provider to contribute to the programs and pay regulatory fees. Although Telseven failed to respond to the NAL, Hines, sole owner, officer, and director of Telseven, filed a response contending that he should not be held personally liable.³ On the basis of Hines’ response, we find no reason to cancel, withdraw, or reduce the proposed penalty, or not to hold Hines personally liable for the violations addressed in the NAL.⁴

II. BACKGROUND

3. The Enforcement Bureau, acting on a referral from the Universal Service Administration Company (USAC) regarding Telseven’s failure to make full and timely payments to the USF, initiated an

¹ This case was formerly assigned File No. EB-08-IH-1386.

² See *Telseven, LLC and Patrick B. Hines*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 6636 (2012) (NAL).

³ See Letter from Joseph D. Pickles, Purcell, Flanagan, Hay & Greene, P.A., Counsel for Patrick B. Hines, to Chief, Investigations & Hearings Division, FCC Enforcement Bureau (Aug. 17, 2012) (on file in EB-IHD-14-00014999) (NAL Response).

⁴ Telseven, Calling 10, LLC, and Hines are also subject to a separate enforcement action for “cramming” charges onto consumers’ local telephone bills and for deceptively marketing ENADA service. See *Telseven, LLC, Calling 10, LLC, Hines a/k/a P. Brian Hines*, Forfeiture Order, FCC 16-20 (rel. Feb. 18, 2016).

investigation into Telseven's compliance with the USF contribution rules and related obligations. Telseven provided an "Enhanced Number Assistance and Directory Assistance" (ENADA) service through which consumers could obtain information about recently disconnected or out-of-service toll free numbers.⁵ A consumer would dial one of the approximately one million such numbers that Telseven controlled and would typically hear a message offering Telseven's assistance in finding the current toll-free number of the party the consumer was trying to reach. A recorded message would then provide the consumer with an "equal access code" (*i.e.*, dial-around number) for contacting Telseven's directory assistance platform in Nevada. Consumers dialing this equal access code would have their calls transmitted to the Nevada platform by Telseven, rather than by the consumer's prescribed long distance carrier. Since Telseven did not offer service in Nevada, all calls using this equal access number were interstate long distance calls.⁶ Offering this service meant that Telseven "held itself out and registered with the Commission as a provider of interstate telecommunications services."⁷

4. Telseven imposed per call charges on many of the consumers who contacted its Nevada platform.⁸ These charges included a per call "Federal Universal Service Fund charge."⁹ Telseven also "charge[d] an administrative recovery fee of \$1.65 in any month" the consumer dialed its "directory assistance service . . . to offset the cost Telseven incurs in complying with regulatory obligations" including "the cost of complying with the Federal Universal Service Charge."¹⁰

5. On June 14, 2012, the Commission issued the *NAL* proposing a forfeiture against Telseven and Hines for apparent willful and repeated violations of Sections 251(e)(2) and 254(d) of the Act and Sections 1.1154, 1.1157(b)(1), 52.17, 52.32(a), 54.706, 54.711(a) of the Rules.¹¹

6. On April 20, 2012, less than two months before the *NAL* was released, Telseven filed for Chapter 7 bankruptcy in the United States Bankruptcy Court for the Middle District of Florida, Jacksonville Division.¹² On August 17, 2012, Hines filed a response, on behalf of himself individually, to the *NAL*.¹³ In his response, Hines does not dispute the USF, NANP, LNP, regulatory fee and

⁵ See *NAL*, 27 FCC Rcd at 6639–40, para. 7 (citing Telseven, LLC, Calling 10, LLC d/b/a California Calling 10, and Patrick Hines, Response to the Order Instituting Investigation and Denial of All Assertions of Possible Violation of California Law of Telseven, LLC, Calling 10, LLC d/b/a California Calling 10, and Patrick Hines, an Individual, Case No. I.10-12-010, at 9–10 (Cal. Pub. Util. Comm'n, filed Jan. 21, 2011) (*Telseven Response to Cal. Pub. Util. Comm'n Investigation Order*)).

⁶ See *id.* (citing Cal. Pub. Util. Comm'n, Opening Brief of Calling 10, LLC d/b/a California Calling 10, Telseven, LLC and Patrick Hines, Case No. I.10-12-010, at 41 (Cal. Pub. Util. Comm'n, filed Apr. 6, 2011)).

⁷ *Id.* (citing Telseven, LLC, "Registration Detail," available at <https://fjall-foss.fcc.gov/coresWeb/searchDetail.do?frn=0009834466>); *International Authorization Granted*, Public Notice, 19 FCC Rcd 4036 (Int'l Bur. 2004)) (internal quotation marks omitted).

⁸ See *id.* at 6640, para. 8 (citing "Telseven.com – Welcome to Telseven LLC," available at <http://telseven.com> (Jan. 23, 2012); "Telseven.com – Rates," available at <http://telseven.com/rate.html> (Jan. 23, 2012)) (on file in EB-08-IH-1386) (internal quotation marks omitted).

⁹ See *id.* (citing "Telseven.com – Welcome to Telseven LLC," available at <http://telseven.com> (Jan. 23, 2012)) (on file in EB-08-IH-1386) (internal quotation marks omitted).

¹⁰ See *id.* (citing "Telseven.com – Rates," available at <http://telseven.com/rate.html> (Jan. 23, 2012)) (on file in EB-08-IH-1386) (internal quotation marks omitted).

¹¹ See *NAL*, 27 FCC Rcd at 6642–46, paras. 13–21 (citing 47 U.S.C. §§ 251(e)(2), 254(d); 47 C.F.R. §§ 1.1154, 1.1157(b)(1), 52.17, 52.32(a), 54.706, 54.711(a)).

¹² See Letter from Jason Burnett, Esq., GrayRobinson, Attorneys at Law, to Marlene H. Dortch, FCC Secretary (Apr. 25, 2012) (on file in EB-IHD-14-00014999) (Burnett Apr. 25, 2012 Letter) (notice of Chapter 7 Bankruptcy regarding Telseven, LLC, U.S. Bankr. Ct., Mid. Dist. Fla., Jacksonville Div., Case No.: 3:11-bk-2682-PMG (Apr. 23, 2012)). That proceeding remains active.

¹³ See *NAL* Response.

Telecommunications Reporting Worksheet violations addressed in the *NAL* but contends that the Commission should rescind the proposed forfeiture against him because the *NAL* should not have “pierced the corporate veil” to impose liability on him as an individual. Telseven did not file a response to the *NAL*.

III. DISCUSSION

7. The Commission proposed a forfeiture in this case in accordance with Section 503(b) of the Act,¹⁴ Section 1.80 of the Rules,¹⁵ and the Commission’s *Forfeiture Policy Statement*.¹⁶ When we assess forfeitures, Section 503(b)(2)(E) requires that we take into account the “nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹⁷ Neither Telseven nor Hines disputes the facts as alleged in the *NAL*. As discussed below, we have fully considered Hines’ response to the *NAL* and find his arguments unpersuasive. Based on the uncontested record of violations documented in the *NAL*, incorporated into this Forfeiture Order by reference, we find that Telseven and Hines violated the Act and Rules by failing to make full and timely USF contributions, NANP contributions, LNP contributions, regulatory fee payments to the Commission, and failing to provide good faith estimates of revenue projections on Quarterly Telecommunications Reporting Worksheets.¹⁸ We therefore assess \$1,758,465 in forfeitures for these violations as proposed in the *NAL*.¹⁹

8. We also affirm our finding in the *NAL* that Telseven and Hines are jointly and severally liable. As explained in the *NAL*, the Commission may hold an entity or individual liable for the acts or omissions of a different, related entity: (i) where there is a common identity of officers, directors, or shareholders; (ii) where there is common control between the entities; and (iii) when it is necessary to preserve the integrity of the Act and to prevent the entities from defeating the purpose of statutory provisions.²⁰ The U.S. Court of Appeals for the D.C. Circuit held in *Capital Telephone Company, Inc. v.*

¹⁴ 47 U.S.C. § 503(b).

¹⁵ 47 CFR § 1.80.

¹⁶ *Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17099 (1997) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

¹⁷ 47 U.S.C. § 503(b)(2)(E).

¹⁸ *See NAL*, *supra* note 4; 47 U.S.C. §§ 251(e)(2), 254(d); 47 CFR §§ 1.1154, 1.1157(b)(1), 52.17, 52.32(a), 54.706; 54.711(a).

¹⁹ As we explained in the *NAL* and below, we treat Hines and the common carrier corporate entity he controlled as the same entity for purposes of finding that Hines violated Sections 251(e)(2), 254(d) of the Act and Sections 1.1154, 1.1157(b)(1), 52.17, 52.32(a), 54.706, 54.711(a) of the Rules. *See NAL*, 27 FCC Rcd at 6649–50, paras. 29–31 and discussion *infra*.

²⁰ *See NAL*, 27 FCC Rcd at 6649, para. 29. The Commission and the courts have long stated that “[w]here the statutory purpose could . . . be easily frustrated through the use of separate . . . entities, the Commission is entitled to look through corporate form and treat the separate entities as one and the same for purpose of regulation.” *Improving Pub. Safety Commc’ns in the 800 MHz Band*, Fifth Report and Order, Eleventh Report and Order, Sixth Report and Order, and Declaratory Ruling, 25 FCC Rcd 13874, 13887–88 (2010) (citing *Gen. Tel. Co. of the S.W. v. United States*, 449 F.2d 846, 854 (5th Cir. 1971)); *see also Capital Tel. Co., Inc. v. FCC*, 498 F.2d 734, 739 (D.C. Cir. 1974) (*Capital Telephone*) (finding that the Commission correctly treated the individual and the corporation he controlled as the same entity and granted only one license and that “substantial evidence supports the Commission’s decision to pierce Capital’s corporate veil in order to carry out the statutory mandate ‘to provide a fair, efficient, and equitable distribution of radio service.’”). The courts have also looked through the corporate form in analogous situations, such as cases involving: the parent and subsidiaries where an entity was created to circumvent agency liability, *Transcontinental Gas Pipe Line Corp. v. FERC*, 998 F.2d 1313, 1321–22 (5th Cir. 1993) (finding that FERC correctly looked behind corporate forms and treated the parent and subsidiaries as a single entity where the parent pipeline set up subsidiaries to sell gas at prices at which the parent could not legally sell); two corporations

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FCC that “a corporation will be looked upon as a legal entity as a general rule, and until sufficient reason to the contrary appears; but, when the notion of a legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons.”²¹

9. As in *Capital Telephone*, it is necessary to look beyond the corporate name and take “cognizance of the identity of ownership and control” between Telseven and Hines in order to advance core statutory directives and our implementing rules.²² We affirm the conclusion in the *NAL* that all three of these factors were met in this case.

10. With respect to the first two factors—“common identity” and “common control”—Hines has not offered any action or failure to act by Telseven that he did not perform individually. Indeed, the evidence demonstrates Hines shared common identity with and total control over Telseven at all relevant times when the Company willfully and repeatedly failed to make full and timely payments to federal contribution programs and regulatory fees.²³ Hines wholly owned Telseven,²⁴ and he shared the same address with Telseven.²⁵ He was the sole director and officer of Telseven.²⁶ He was Telseven’s only

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that were controlled by one family, *Mansfield Journal Co. (FM) v. FCC*, 180 F.2d 28, 37 (D.C. Cir. 1950) (concluding that although two newspapers were separate corporations, with separate editorial staffs, and located in communities over fifty miles apart, the Commission correctly denied applications of both corporations when the record showed that one family owned all of the stock in both corporations, the owners took active part in the control and policy formulation of the newspapers, and the true applicant in each case was the same group of individuals); and several corporations that were used to operate one business, *Schenley Distillers Corp. v. United States*, 326 U.S. 432, 437 (1946) (“The fact that several corporations are used in carrying on the business does not relieve them of their several statutory obligations more than it relieves them of the taxes severally laid upon them.”).

²¹ *Capital Telephone*, 498 F.2d at 738.

²² *Id.*

²³ After the Commission began its investigation into Telseven’s violations, but prior to the issuance of the *NAL*, Hines transferred his membership interests to the Patrick Hines Revocable Trust (Hines Trust). This ownership transfer from Hines to the Hines Trust was disclosed to the Commission during the pendency of the bankruptcy proceeding on April 23, 2012. See Burnett Apr. 25, 2012 Letter, *supra* note 11; see also *In re Telseven, LLC, Case No. 3:12-bk-02582-PMG, U.S. Bankr. Ct., Mid. Dist. Fla., Corporate Ownership Statement (Rule 7007.1)* (May 4, 2012) (on file in EB-IHD-14-00014999) (disclosing the Patrick Hines Revocable Trust). Even after the transfer, Hines retained sole control of Telseven as the trustee of the Hines Trust, which he managed for his sole benefit as the beneficiary of the Hines Trust. Testimony of Patrick Hines, Proceeding No. I1012010, Consumer Protection and Safety Division, California PUC at 302, 431 (Nov. 16 and 17, 2011) (stating Hines is the beneficiary of the trust). Moreover, neither Telseven nor Hines disputed the finding in the *NAL* that Hines is the sole beneficiary of the Hines Trust. Importantly, Telseven and Hines represented to the Commission without equivocation that he was the sole owner of Telseven and controlled the Company. See International Section 214 Application of Telseven, LLC, FCC File No. ITC2142004020900047, Attachment 2, granted Dec. 1, 2005, DA 05-3129, Report No. TEL-00970 (Hines identified as 100% owner of Telseven in Company’s Commission license application) (cited in *NAL*, 27 FCC Rcd at 6649 n.111);

²⁴ See Hines Telseven Deposition at 53, Lines 12 – 15 (“Q. ‘Okay. Just to clarify, I believe you stated before that you own Telseven. You own all the membership interest?’ – A. ‘Correct.’”).

²⁵ The Telseven address provided on the FCC Registration systems is identical to the address that Hines provided for himself while under oath for purposes of a deposition provided as part of the Telseven Chapter 7 bankruptcy proceeding. Compare FCC Registration Database at

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manager²⁷ and employee.²⁸ Hines executed and signed all transactional documents on behalf of Telseven, including amendments to Telseven's Articles of Organization, and all declarations attesting to the truth and accuracy of Telseven's responses to the Commission.²⁹ These facts demonstrate that Hines and Telseven share a common identity and that Hines exercises common control over both.

11. The third criterion—the need to preserve the integrity of the Act and to prevent the defeat of the purpose of the statutory provisions at issue—is also clearly satisfied here. As stated in the *NAL*, Section 254(d) of the Act requires that “[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis” to the USF.³⁰ Similarly, Section 251(e)(2) of the Act requires that all telecommunications carriers shall bear telecommunications numbering and number portability costs on a competitively neutral basis.³¹ Finally, Section 9(a)(1) of the Act directs that the Commission “shall assess and collect regulatory fees to recover the costs” of its regulatory activities.³²

12. As we discussed above and in the *NAL*, Hines is the sole owner and officer of Telseven and controlled every aspect of the Telseven operation.³³ Failure to hold Hines responsible for Telseven's violations of the requirements to contribute to these programs would establish a loophole in our rules for others to emulate, significantly undermining the statutory mandates that all telecommunications service providers must make such payments and face enforcement penalties if they fail to do so. To determine otherwise would “defeat public convenience [and] justify wrong.”³⁴

13. Hines argues we should not “pierce the corporate veil” to hold an individual owner of a corporate entity liable for the entity's violations, but rather that the test should only apply when two

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<https://apps.fcc.gov/coresWeb/simpleSearch.do?btnSearch=true> (last visited Mar. 19, 2015) *with* Hines Telseven Deposition at 6, lines 10 – 11.

²⁶ See Letter from Wendy M. Creeden, Counsel for Telseven, LLC, Sullivan & Worcester, LLP, to Elizabeth Mumaw, Attorney Advisor, Investigations & Hearings Division, FCC Enforcement Bureau, at Response to Inquiry 3 (Sept. 22, 2008) (on file in EB-IHD-14-00014999) (*Telseven Sept. 22 Letter*).

²⁷ See United States Bankruptcy Court, Middle District of Florida, Jacksonville Division, Case No.: 3:12-bk-02682-PMG; In re: Telseven, LLC, Debtor, Transcript of Examination of Witness Patrick Brian Hines, at 6, lines 13 – 21 (“[Hines:] ‘I was the manager, authorized representative’”; “[Hines:] ‘I’m the sole manager, right.’”); 19, line 9 (“[Hines:] ‘I am the owner of Telseven.’”) (Aug. 6, 2012) (Hines Telseven Deposition).

²⁸ See Hines Telseven Deposition at 12, lines 15–21 (“Q. ‘So, we’ve got Telseven as the entity of which you were the managing member and the only member. Who else worked for Telseven property?’ – A. ‘We had – no. We had – we – this is a sophisticated business in the sense that we had to hire outside consultants, you know, who ran computer systems, billing, et. cetera.’”); 15, line 14 (“[Hines]: ‘So everything got outsourced, so to speak.’”); 23, lines 24 – 25; 24, line 1 (“Q. ‘But there were no regular employees working for Telseven.’ – A. ‘No.’”).

²⁹ See *NAL*, 27 FCC Rcd at 6649, para. 30; *Telseven Sept. 22 Letter* at Responses to Inquiries 1–2 (Declaration of Hines certifying the truth and accuracy of information concerning Telseven provided to the Bureau); *see also id.* at Exhibit A (Telseven Articles of Organization) (Public Version). Hines also was the signatory attesting to the truth and accuracy of the data provided on Telecommunications Reporting Worksheets (Forms 499-A and Forms 499-Q) filed on behalf of Telseven. *See, e.g.*, Telseven Form 499-A filings for 2006 through 2008 (on file in EB-IHD-14-00014999).

³⁰ See *NAL*, 27 FCC Rcd at 6638, para. 4 (citing 47 U.S.C. § 254(d)).

³¹ 47 U.S.C. § 251(e)(2); *see also id.* § 159(a) (requiring that the Commission collect regulatory fees to recover the costs of its regulatory activities).

³² 47 U.S.C. § 159(a)(1).

³³ *See supra* paragraph 9; *NAL*, 27 FCC Rcd at 6649–50, para. 30.

³⁴ *Capital Telephone*, 498 F.2d at 738.

corporate entities are involved. He asserts that the piercing the corporate veil test “makes no sense with respect to an individual owner of a corporate entity”³⁵ because all three of the factors would always apply in the case of a small business, making the test meaningless.³⁶ We disagree. Among other things, Hines’ argument ignores the objective of the third factor—the “necess[ity] to preserve the integrity of the Communications Act and to prevent the entities from defeating the purpose and provisions of statutory provisions.”³⁷ Indeed, the test captures individuals similarly situated to Hines because that is who the test is designed to capture—egregious violators of the Act who create sham corporate forms to evade liability. Accepting Hines’ assertion would create a blanket exemption from corporate veil-piercing for the very inequity the doctrine is intended to address. We accordingly conclude that both the three factor test—and our review of the equities—clearly urges piercing Telseven’s corporate veil, and Hines has provided no basis to disturb that conclusion.³⁸

14. Moreover, the D.C. Circuit’s decision in *Capital Telephone* upheld the Commission’s decision to pierce the corporate veil between an individual and his wholly owned corporation. In *Capital Telephone*, the Commission pierced the corporate veil of the Capital Telephone Company, Inc. when both it and its sole owner, Mr. Peter Bakal, sought licenses for the only two high band paging channels available in a certain region of New York. Affirming the FCC, the D.C. Circuit stated “[t]he Commission recognized [that] injustice ... would be done to [a competing applicant] if both the Bakal and Capital applications were granted. This would, in effect, grant to one individual the use of all the most desirable available high-band paging channels in the ... area”³⁹ The court found that “substantial evidence supports the Commission’s decision to pierce Capital’s corporate veil in order to carry out the statutory mandate ‘to provide a fair, efficient, and equitable distribution of radio service.’”⁴⁰ Here, the Commission is acting to prevent reliance on corporate form to frustrate our efforts to implement core statutory provisions.⁴¹ Contrary to Hines’ argument, we are not “eviscerat[ing] automatically” corporate legal structures.⁴²

15. Hines also argues that the Commission’s goal of promoting small businesses counsels against piercing the corporate veil here.⁴³ Hines cannot reasonably rely upon this goal where the small business in question has, for several years, imposed charges on consumers to offset the costs of regulatory obligations it did not, itself, meet.

³⁵ NAL Response at 1-3.

³⁶ *Id.*

³⁷ Contrary to Hines’ assertion, there are instances where violations would not rise to the level of frustrating the purpose of the Act and thus implicate this test. See *Lockheed Martin Corp.*, Order on Reconsideration, 17 FCC Rcd. 13160, 13167, para. 18 (2002) (determining that the public interest would not be served by additional Commission action against a licensee for a minor rule violation); *David A. Davila, et al.*, Memorandum Opinion & Order, 6 FCC Rcd 2897, 2899, para. 10 (1991) (late disclosure of a loan agreement is a minor rule violation that, without more, does not raise a substantial and material question of fact with respect to licensee’s character qualifications). However, egregious violations such as those committed by Hines undoubtedly qualify.

³⁸ *Capital Telephone*, 498 F.2d at 737 (“The broad **equitable** standards of the statute, enacted to further public convenience, clearly support the Commission’s decision to look beyond the corporate entity to serve the interests of fairness, justice and **equity**.”) (emphasis added).

³⁹ *Capital Telephone*, 498 F.2d at 736.

⁴⁰ *Id.* at 739 (quoting 47 U.S.C. § 307(b)).

⁴¹ See 47 U.S.C. §§ 159, 251(e)(2), 254(d).

⁴² NAL Response at 3.

⁴³ *Id.*

16. Hines also protests that, “in its almost 80 year history, the FCC has not applied the ‘pierce the corporate veil’ test described in the NAL to find an individual owner ... separately liable for a forfeiture against that entity.”⁴⁴ As discussed above, the applicable standard permits us to pierce the veil of a corporation to reach an individual owner who has acted to undermine the statute under which his company is regulated. It does not, moreover, preclude us from finding that owner liable for a forfeiture and we do so here based upon the clear record before us.

17. Finally, Hines contends that because Telseven is a Florida limited liability company, the Commission should apply Florida corporate law to determine whether to pierce the corporate veil.⁴⁵ We disagree. As an initial matter, the Commission is enforcing federal law, which Telseven and Hines violated. Therefore, it is appropriate for the Commission to rely on federal common law, which clearly supports the Commission’s decision to pierce the corporate veil.⁴⁶ Even if we were to apply Florida law, the outcome would not be altered, as it is appropriate to pierce the corporate veil under that state’s law if “it [can] be shown that the corporation is formed or used for some illegal, fraudulent or other unjust purpose,”⁴⁷ which accurately describes Telseven.⁴⁸

18. Hines nonetheless contends that “the [NAL] is devoid of any allegations that Telseven was established or used for an improper, illegal or fraudulent purpose.”⁴⁹ We disagree. The NAL details how Hines used Telseven to engage in practices in violation of Sections 251(e)(2) and 254(d) of the Act and Sections 1.1154, 1.1157(b)(1), 52.17, 52.32(a), 54.706, 54.711(a) of the Rules.⁵⁰

19. Hines does not dispute the underlying allegations that Telseven was a telecommunications service provider obligated to contribute to the programs, pay regulatory fees, and file good faith estimates of projected revenue on Quarterly Telecommunications Reporting Worksheets. As the sole corporate officer and manager, he had the power to ensure the contributions were made as required. In an investigation such as this one, where the activities of the corporate enterprise consisted of significant violations of the rules governing telecommunications providers’ payments to contribution and

⁴⁴ *Id.* at 2.

⁴⁵ *Id.* at 4–5.

⁴⁶ See *Ivy Broad. Co. v. Am. Tel. & Tel. Co.*, 391 F.2d 486, 491 (2d Cir. 1968) (As a result of the Act’s comprehensive regulatory scheme, “the duties, charges, and liabilities of telegraph or telephone companies with respect to interstate communications service are to be governed solely by federal law,” and the states are precluded from acting in this area.”); *MCI Telecomms. Corp. v. O’Brien Mktg., Inc.*, 913 F. Supp. 1536, 1541 (federal common law, rather than state law, applies to the issue of piercing the corporate veil in a proceeding interpreting the Act). Hines’s reliance on *Stromberg Metal Works v. Press Mech., Inc.*, 77 F.3d 928 (7th Cir. 1996) for his argument that Florida law controls is unavailing. Hines inappropriately seeks to rely on a case subject to federal jurisdiction only because of a diversity of citizenship, as opposed to cases such as *Ivy Broad Co.* and *MCI Telecomms Corp.*, which pertain to the enforcement of a valid federal statute. In *Stromberg*, the U.S. Court of Appeals for the Seventh Circuit addressed the veil piercing matter as a subsidiary issue to resolving a choice of law question in a contractual dispute. Only after deciding that Illinois law applied because of the controlling contract did the court apply that state’s standard for piercing the corporate veil. See *Stromberg*, 77 F.3d at 933-34. And under Illinois law, the corporate veil piercing law of a company’s state of incorporation is applied. See *id.* (citing *Kern v. Chicago & Eastern Illinois R.R.*, 6 Ill.App.3d 247, 250-51, 285 N.E.2d 501, 503-04 (1st Dist. 1972)). The laws of the state of incorporation do not always govern corporate veil piercing. See *id.*

⁴⁷ *Dania Jai-Alai Palace, Inc. v. Sykes*, 450 So.2d 1114, 1121 (Fla. 1984) (quoting *Robert’s Fish Farm v. Spencer*, 153 So.2d 718, 721 (Fla. 1963)).

⁴⁸ Other cases cited by Hines do not support his argument that the Commission erred in piercing the corporate veil here and merely repeat the same finding quoted above. See, e.g., *Ally v. Naim*, 581 So.2d 961 (Fla. 3d DCA 1991); *Hilton Oil Transport, et al. v. Oil Transport Co.*, 659 So. 2d 1141 (Fla. 3d DCA 1995).

⁴⁹ NAL Response at 5–6.

⁵⁰ NAL, 27 FCC Rcd at 6642–50, paras. 13–31.

regulatory fee programs, and the corporation has since sold its assets and then filed for bankruptcy protection, we find that statutory purposes would otherwise be frustrated if we permitted Hines to hide behind his corporate entities and avoid personal liability for such violations.⁵¹

20. Based on the record before us and in light of the applicable statutory factors, we find that Telseven and Hines willfully and repeatedly failed to make required USF, NANP, LNP, regulatory fee payments, and failed to make good faith estimates of quarterly telecommunications revenue in violation of Sections 251(e)(2) and 254(d) of the Act and Sections 1.1154, 1.1157(b)(1), 52.17, 52.32(a), 54.706, 54.711(a) of the Rules. We decline to cancel or reduce the proposed forfeitures of one million, five hundred ninety-eight thousand, four hundred sixty-five dollars (\$1,598,465) for failure to make full and timely USF contributions; one hundred thousand dollars (\$100,000) for failure to file accurate Quarterly Telecommunications Reporting Worksheets; ten thousand dollars (\$10,000) for failure to make full and timely NANP contributions; thirty thousand dollars (\$30,000) for failure to make full and timely LNP contributions; and twenty thousand dollars (\$20,000) for failure to make full and timely regulatory fee payments to the Commission.⁵² We thus conclude that Telseven and Hines are jointly and severally liable for total forfeitures of one million, seven hundred fifty-eight thousand, four hundred sixty-five dollars (\$1,758,465).⁵³

IV. ORDERING CLAUSES

21. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act,⁵⁴ and Section 1.80 of the Rules,⁵⁵ Telseven, LLC and Patrick B. Hines, **ARE JOINTLY AND SEVERALLY LIABLE FOR A MONETARY FORFEITURE** in the amount of one million, seven hundred fifty-eight thousand, four hundred sixty-five dollars (\$1,758,465) for willfully and repeatedly violating Sections 251(e)(2) and 254(d) of the Act and Sections 1.1154, 1.1157(b)(1), 52.17, 52.32(a), 54.706, 54.711(a) of the Rules.

22. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release of this Forfeiture Order.⁵⁶ For collection against Telseven, LLC, the Commission will comply with 11 U.S.C. §101 *et seq.* as and to the extent necessary. For collection against Patrick B. Hines, if the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.⁵⁷

⁵¹ The imposition of a forfeiture on Hines is also consistent with other cases in which the courts have held corporate officers personally liable for participating in or authorizing an entity's violations of law. *See Texas v. Am. Blastfax*, 164 F. Supp. 2d 892, 897–98 (W.D. Texas 2001) (“[I]f the officer directly participated in or authorized the statutory violation, even though acting on behalf of the corporation, he may be personally liable” for violations of the TCPA). *See also U.S. v. Pollution Servs. of Oswego, Inc.*, 763 F.2d 133, 134–35 (2nd Cir. 1985) (“In light of the clear congressional intent to hold ‘person[s]’ liable for violations [of the Rivers and Harbors Appropriations Act], we see no reason to shield from civil liability those corporate officers who are personally involved in or directly responsible for statutorily proscribed activity”); 47 U.S.C. § 153(39) (defining a “person” to include individuals as well as corporate entities). In other contexts, the courts have found the responsible corporate officer of a company to be personally liable for unlawful acts where the corporate officer was in a position of responsibility *vis-à-vis* the illegal conduct, had the power to prevent others from engaging in such conduct or to promptly correct the violation, and failed to take action. *See, e.g., U.S. v. Hodges X-Ray, Inc.*, 759 F.2d 557, 560–62 (6th Cir. 1985).

⁵² *NAL*, 27 FCC Rcd at 6650–51, para. 32.

⁵³ *See id.*

⁵⁴ 47 U.S.C. § 503(b).

⁵⁵ 47 CFR § 1.80.

⁵⁶ *Id.*

⁵⁷ 47 U.S.C. § 504(a).

23. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Telseven LLC and Patrick B. Hines shall send electronic notification of payment to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov and Robert B. Krinsky at Robert.Krinsky@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.⁵⁸ When completing the Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with completed Form 159) must be mailed to the Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank–Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank–Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

24. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer–Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.⁵⁹ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

25. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to Jacob A. Brown and J.C. Van Lierop, III, Attorneys for Telseven Chapter 7 Trustee Doreen Abbott, Ackerman Senterfitt, 50 North Laura Street, Jacksonville, Florida 32202 and to Telseven, LLC, 200 Executive Way, Ponte Verde Beach, Florida 32082.

⁵⁸ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

⁵⁹ See 47 CFR § 1.1914.

26. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to Joseph D. Pickles, Attorney for Patrick B. Hines, at Purcell, Flanagan, Hay and Greene, 1548 Lancaster Terrace, Jacksonville, FL 32204.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary